

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1263 of 1998

in

SPECIAL CIVIL APPLICATION No 4010 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMBHAI MANILAL PATEL

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR KS ACHARYA for Appellant

MRS VASAVDATTA BHATT for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

Date of decision: 17/06/1999

ORAL JUDGEMENT (Per : C.K.Thakker, J)

Heard learned counsel Mr. K.S. Acharya for the

appellant and Mrs. Vasavdatta Bhatt, for Respondent no.1 (on caveat).

This appeal is filed against summary dismissal of Spl.C.A. No. 4010 of 1998 by the learned Single Judge. The appellant was the original petitioner. He was serving as a conductor in Gujarat State Road Transport Corporation, Ahmedabad (hereinafter referred to as "the Corporation"). It was the case of the Corporation that in 1991, he was working as Conductor in Kutch Division. On September 11, 1991, he was on duty on Kadana Ahmedabad route. The checking squad checked his bus at Hansol and it was found that the appellant had not issued ticket to one passenger. He had issued tickets to six passengers but they were not punched. He had recovered the amount of fare from all the seven passengers. The way bill was also not closed nor the above tickets were mentioned in the way bill. He had thereby committed misconduct and misappropriated the amount of fare. An inquiry was held against him wherein he was found guilty and was, therefore, dismissed from service on August 18, 1992. Being aggrieved by the said order, the appellant approached the Labour Court. The Labour Court, however, dismissed Reference No. 172 of 1997 on January 29, 1998. Being aggrieved by the award, the appellant preferred above-numbered petition and the learned Single Judge, by the impugned judgment, dismissed it on September 11, 1998.

Mr. Acharya, learned counsel for the appellant submitted that the case of the appellant was not of misconduct or misappropriation of amount. There may be few lapses or negligence on his part, but in the facts and circumstances of the case, extreme punishment of dismissal was not called for and there was an error apparent on the face of record committed by the labour Court as also by the learned Single Judge in not granting reinstatement as well as consequential benefits.

From the record as also from the findings recorded by the Labour Court, it is clearly proved that misconduct was committed by the appellant. He had not issued tickets to certain passengers after collecting the amount of fare from them. Even in past, there were as many as 27 defaults majority of which related to non-issuance of tickets after collecting amount of fare. In several cases, unpunched tickets were found which were issued and were taken back from the passengers by the appellant. Way-bills were also not closed with a view to re-issue unpunched tickets. Considering all those facts and circumstances, the Labour Court dismissed the reference, and the learned Single Judge did not interfere with the award.

Before the learned Single Judge, reliance was

placed on a decision of the High Court of Karnataka in Karnataka State Road Transport Corporation Ltd. v/s B.M. Patil & another, (1996) 2 LLJ 536. In that case, a conductor was involved in as many as 147 previous defaults and was dismissed from service. He was ordered to be reinstated by the Labour Court. The Corporation approached the High Court. A Single Judge of the Court maintained reinstatement.

In paras 6 to 11, the learned Single Judge stated as under :-

"6. In this case, the misconduct for which the extreme punishment visited the worker is causing a very negligible loss to the employer. A serious question that arises in such cases would be, besides the legality of the punishment, the morality of imposing such a severe punishment as well. While imposing a punishment the employer should first consider whether the delinquent committed the offence with intent to make unlawful gain and to pilfer the revenue of the employer. Was it with intention to gain 50 paise that the worker committed the present misconduct? Was he in such a deprived circumstance that he desired to make an illegal gain of a trivial amount of 50 paise? What was the number of passengers travelling in the bus and is it possible that he would have accidentally omitted to issue tickets? is it not possible that while he was in the process of issuing tickets, the two persons might have boarded the bus? In several cases we come across, such omission takes place in buses loaded with more than the permitted number of passengers. Such, may be cases of human error committed by the Conductor while issuing tickets to passengers travelling in a bus with passengers much more than the permitted number. The disciplinary authority should keep in mind all facts of the problem before it awards the extreme penalty of dismissal.

7 Misconduct like the above on several instances are not committed intentionally. It is too much to imagine that a worker would have omitted to issue tickets deliberately to gain few rupees at the risk of his job. More often, it is due to the crowd in bus that he misses to issue tickets than a desire by him to gain few rupees. The catastrophe that may befall is more serious than what is sought to be prevented. First it visits the employee. He is rendered jobless. It

generates a litigation which in the present pattern spreads over years producing ultimately a disgruntled employee. Actually the real victim of any such punishment is the family of the worker whose bread-winner is jobless. The future is rendered bleak to them and in its turn causes greater hardship to the society than it intends to cure.

8. That apart, the management also shares the losses in another way. When the worker is dismissed, someone else will have to be placed in his place to discharge the duties. And if the worker is ordered to be reinstated ultimately with back wages virtually there will be double payment i.e. two persons would have to be paid for a single job. In the case of a public sector undertaking the loss is passed on to the common man, the tax payer.
9. The question then would be in the case of a conductor (as in the instant case) who has a past history, should the employer ignore the same? This is a case, the remedy for which employer himself should discover and the solution is not far to discover. In the case of a ticketless traveller the management has designed a method to curb the same by imposing fine on them. The object with which this is done is so that he may not repeat travelling in the bus without tickets. This method can certainly be considered of imposing of penalty on the Conductor himself who is discovered to be intentionally pilfering the revenue of the Corporation.
10. We may notice that all these cases of non-issue of tickets, we may take note of the fact that there are two parties joining to commit the misconduct i.e. the Conductor and the passenger. If the conductor wants to make an unlawful gain, then he has to collect the fare and fail to issue tickets. In such an event, the passenger who boards the bus must co-operative with the conductor. If he has to co-operate, then he should be familiar to the conductor and he should agree to be a party to commit the misconduct at the risk of paying penalty in the event of being caught by the inspecting staff. It is too much to imagine that the conductor will hatch a conspiracy to pilfer revenue of the

Corporation as and when stray passengers board the bus at various stages. If the conductor wants to make an illegal gain by the omission to issue tickets, the passenger has to be condescending party. This is really unlikely. Hence, the benefit of doubt in cases of stray lapses should be that the omission to issue tickets may be accidental.

11. Hence the disciplinary authority should reserve the punishment of dismissal only in extreme cases. It is where the exercise of discretion by the disciplinary authority steps in. It cannot and should not act like a robot, its justice should be moulded with humanism and understanding. It should really assess each case on its own merit. The fact that on a past occasion the delinquent might have acted in a particular manner does to mean that on the particular occasion as well he would have acted with intent to cause loss to the employer. Each set of fact should be decided with reference to evidence regarding the said allegations and those allegations should be the basis of the decision. May be, the past conduct of the worker may be a ground to assume that the delinquent may have had propensity to commit the misconduct and to assess the quantum of punishment to be imposed. But that by itself, cannot provide any foundation to hold that the present conduct of the worker is a misconduct."

We are unable to agree with the law laid down by a Single Judge of the High Court of Karnataka in the case of B.M.Patil , particularly wider observations made therein. When the above judgment was cited before the learned Single Judge, the learned Single Judge stated;

" I can only say with respect that I am not inclined to take such an approach in such facts."

We are in total agreement with the learned Single Judge and approve his view. In the facts and circumstances of the case, we find no infirmity in the order passed by the learned Single Judge. Hence, we dismiss LPA. No costs.

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